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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CRL.REV. P. 1037/2003**

% *Judgment delivered on: 9th January, 2012*

RAJIV BATRA ..... Petitioner
Through: In person.

versus

CUSTOMS THR. SHRI M.N, SUBA RAO, A.C.O. ..... Respondents
Through: Ms. Pooja Bhaskar, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the instant petition, the petitioner has challenged the impugned order dated 18th December, 2003 whereby the learned Addl. Sessions Judge, New Delhi has dismissed the appeal against the judgment and order dated 5.03.2003 and 21.3.2003 respectively whereby the petitioner was convicted for the offences punishable under Section 135(1)(a) and 132 of the Customs Act.

2. The facts in brief of the case are that on 18.7.1989, the petitioner arrived at the IGI Airport, New Delhi from Singapore via Bangkok, Japan Airline JL-491 on 18.7.1989 and reported for customs clearance on Red Channel Counter. He declared goods worth Rs.4,000/- and deposited the customs due. As he was leaving the arrival hall, he was

intercepted near the Custom exit and asked by the Air Custom Officers whether he was carrying contraband. On repeated asking, the petitioner continued answering in negative. He was then taken to adjacent room for his personal search. His baggage was examined. On screening machine, concealment of some high density metal in the VCP was suspected. Thereafter the VCP was opened with the help of a screw driver and 23 cut pieces of gold of different sizes were found in the ROTO portion of the VCP. A Goldsmith certified that the pieces were of 24 carat purity quality collectively weighing 385 gm valued at Rs.1,15,000/- (worth Rs.73,150/- in the international market). The petitioner failed to produce any document for lawful import of the gold recovered.

3. The petitioner is present in person who is not disputing the conviction order. He is only praying that the instant case pertains to the year 1989, therefore, he has already suffered for more than 22 years and he has already undergone more than one month. Therefore, he has prayed that while maintaining the conviction, he should be released on sentence already undergone.

4. I am conscious that under the provisions of Sec. 135 of the Customs Act, the minimum sentence of imprisonment cannot be less than one year. However, I am also conscious that for special and adequate reasons, the sentence of the imprisonment can be less than one year.

5. In the instant case, the petitioner has brought gold by concealing in VCP and did not declare the gold. Presently, as per the customs

policy 5Kg gold and 50 Kg silver can be imported subject to the payment of the customs duty.

6. During the period 1989, the policy of the country was not so liberalized and therefore, it was not permitted to bring gold in this country. The passengers were used to bring the gold by so many methods. The case of the petitioner also falls in that category.

7. The instant case is of economic offence in the prospective. It is the society at large which is adversely affected by such an offence. The economic offences defeat the economic planning. The country which has not been able to overcome the label or underdeveloped or developing country despite the efforts made by the Government all these years cannot forego or ignore such offences.

8. This country has now brought liberalization, globalization and privatisation, therefore, presently one can bring the gold and silver in a substantial quantity, subject to terms and conditions.

9. In the present case, the appellant has suffered more than 22 years. This is the third round of the litigation. He has already undergone more than one month in the jail, therefore, in the circumstances, I deem it appropriate that while maintaining the conviction, the order dated 21.3.2003 is modified to the extent already undergone, accordingly he is released on the sentence already undergone. The bail bond of the petitioner is discharged. The order of this court be sent to the Jail Superintendent for compliance.

10. The criminal Revision Petition 1037/2003 is partially allowed, as prayed.

SURESH KAIT, J

JANUARY 09, 2012
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